

46 Am. Jur. 2d Judges § 214

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Judges

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IX. Disqualification to Act in Particular Case

E. Effect of Disqualification

§ 214. Validity of official acts where one or more of several judges are disqualified

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Disqualification of judge as affecting validity of decision in which other nondisqualified judges participated](#), 29 A.L.R.5th 722

Where one or more of several judges participating in a decision are disqualified, the decision may be either void or voidable. Some courts hold that the participation of a disqualified judge does not affect the validity of the proceedings and judgment, where the judge's presence is not necessary to constitute a quorum and such judge's vote does not affect the result¹ or where the disqualified judge does not cast the deciding vote.² Where a disqualified judge sits on the tribunal but does not participate in the proceedings or the decision, the decision rendered by the court would not be invalid.³ The disqualification of a judge would have no effect on the validity of a decision in which other nondisqualified judges participated, where the verdict rendered by the nondisqualified judges was unanimous.⁴

Other authority has held that a judgment participated in by a disqualified judge is void where—

— the participation of the disqualified judge created the appearance of impropriety.⁵

— the disqualification was held to create an insufficient quorum.⁶

— the disqualified judge cast the deciding vote or authored the majority opinion.⁷

— the rulings of a disqualified judge were relied on by nondisqualified judges in related proceedings.⁸

Other authority has held that a judgment participated in by a disqualified judge is absolutely void.⁹

The decision of a court will not be disturbed where a litigant, aware that a judge subject to disqualification participates in the decision with other nondisqualified judges, fails to object.¹⁰

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Footnotes

- 1 [Bracey v. Gray](#), 71 Cal. App. 2d 206, 162 P.2d 314 (3d Dist. 1945).
- 2 [Goodheart v. Casey](#), 523 Pa. 188, 565 A.2d 757 (1989).
- 3 [Bracey v. Gray](#), 71 Cal. App. 2d 206, 162 P.2d 314 (3d Dist. 1945).
- 4 [Boyer v. State](#), 486 So. 2d 70 (Fla. 4th DCA 1986).
- 5 [Blaisdell v. City of Rochester](#), 135 N.H. 589, 609 A.2d 388, 29 A.L.R.5th 891 (1992).
- 6 [Marshall v. Amos](#), 1968 OK 86, 442 P.2d 500 (Okla. 1968).
- 7 [Parham v. Church Mut. Ins. Co.](#), 53 Ark. App. 194, 922 S.W.2d 724 (1996), opinion after grant of reh'g, 54 Ark. App. 262, 924 S.W.2d 494 (1996).
- 8 [Blaisdell v. City of Rochester](#), 135 N.H. 589, 609 A.2d 388, 29 A.L.R.5th 891 (1992).
- 9 [State v. Bradish](#), 95 Wis. 205, 70 N.W. 172 (1897).
- 10 [Goodheart v. Casey](#), 523 Pa. 188, 565 A.2d 757 (1989).

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